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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75641; File No. SR-NYSEArca-2015-65]

August 7, 2015

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 6.15 to Establish Exchange Rules Governing the Give Up of a Clearing Member by Options Trading Permit Holders and OTP Firms and Conforming Changes to Rules 6.66 and 6.79

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on July 27, 2015, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 6.15 to establish Exchange rules governing the give up of a Clearing Member by Options Trading Permit Holders and OTP Firms and proposes conforming changes to Rules 6.66 and 6.79. The text of the proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the

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<sup>1</sup> 15 U.S.C.78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

## Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The Exchange proposes to amend Rule 6.15 to establish Exchange rules governing the “give up” of a Clearing Member<sup>4</sup> by Options Trading Permit Holders and OTP Firms (each an “OTP,” collectively, “OTPs”). In addition, the Exchange proposes changes to Rules 6.66 and 6.79 to reflect proposed amendments to Rule 6.15. The Exchange believes that this proposal to include the give-up process in Exchange rules would result in the fair and reasonable use of resources by both the Exchange and OTPs. In addition, the proposed change would align the Exchange with competing options exchanges that have recently adopted rules consistent with this proposal.<sup>5</sup>

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<sup>4</sup> Rule 6.1(3) defines “Clearing Member” as an Exchange OTP Firm or OTP Holder which has been admitted to membership in the Options Clearing Corporation pursuant to the provisions of the Rules of the Options Clearing Corporation.

<sup>5</sup> See Securities and Exchange Act Release No. 72668 (July 24, 2014), 79 FR 44229 (July 30, 2014) (SR-CBOE-2014-048) (order approving proposed rule change relating to the “give up” process, the process by which a Trading Permit Holder “gives up” or selects and indicates the Clearing Trading Permit Holder responsible for the clearance of an Exchange transaction). See also Securities Exchange Act Release No. 72325 (June 5, 2014), 79 FR 33614 (June 11, 2014) (Notice). The Exchange notes that this proposal is a copycat filing, which is substantially similar in all material respects to the give-up process approved on CBOE, except as noted herein. See *infra* n. 13 (regarding rule text in amended Rule 6.15(f) explicitly describing procedures for Guarantors to reject a trade).

By way of background, to enter transactions on the Exchange, an OTP must either be a Clearing Member or must have a Clearing Member agree to accept financial responsibility for all of its transactions. Specifically, Rule 6.15 provides that every Clearing Member will be responsible for the clearance of Exchange option transactions of each OTP that gives up the Clearing Member's name in an Exchange option transaction, provided the clearing member has authorized such member or member organization to give up its name with respect to Exchange option transactions. Similarly, Rule 6.79 provides, in relevant part, that every Clearing Member will be responsible for the clearance of Exchange transactions of each OTP that gives up the Clearing Member's name pursuant to a Letter of Authorization, Letter of Guarantee, or other authorization given by the Clearing Member to the executing OTP. In addition, Rule 6.66(a) (Order Identification) provides that for each transaction in which an OTP participates, the OTP must give up the name of the Clearing Member through whom the transaction will be cleared. The Exchange has determined that it would be beneficial to amend Rule 6.15 and specify in detail the give-up process and to modify Rules 6.66 and 6.79, as described below. The Exchange believes the proposed changes would result in a more comprehensive streamlined give up process.

#### Designated Give Ups and Guarantors

The Exchange proposes to amend current Rule 6.15 by replacing the current rule text<sup>6</sup> with details regarding the give up procedure for OTPs executing transactions on the Exchange,

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<sup>6</sup> See Rule 6.15 (Responsibility of Clearing OTP Holders and OTP Firms for Exchange Option Transactions) ("Every OTP Holder and OTP Firm which is a clearing member of the Options Clearing Corporation shall be responsible for the clearance of the Exchange option transactions of such OTP Holder and OTP Firm and of each OTP Holder and OTP Firm which gives up the name of such clearing member in an Exchange option transaction, provided the clearing member has authorized such OTP Holder and OTP Firm to give up its name with respect to Exchange option transactions.").

and to re-title this rule “Give Up of a Clearing Member.”<sup>7</sup> As amended, Rule 6.15 would provide that an OTP may only give up a “Designated Give Up” or its “Guarantor,” as those roles would be defined in the Rule.

Specifically, amended Rule 6.15 would introduce and define the term “Designated Give Up” as any Clearing Member that an OTP (other than a Market Maker<sup>8</sup>) identifies to the Exchange, in writing, as a Clearing Member the OTP requests the ability to give up. To designate a “Designated Give Up,” an OTP must submit written notification to the Exchange, in a form and manner prescribed by the Exchange (“Notification Form”). A copy of the proposed Notification Form is included with this filing in Exhibit 3. Similarly, should an OTP no longer want the ability to give up a particular Designated Give Up, as proposed, the OTP would have to submit written notification to the Exchange, in a form and manner prescribed by the Exchange.

The Exchange notes that, as proposed, an OTP may designate any Clearing Member as a Designated Give Up. Additionally, there would be no minimum or maximum number of Designated Give Ups that an OTP must identify. The Exchange would notify a Clearing Member, in writing and as soon as practicable, of each OTP that has identified it as a Designated Give Up. The Exchange, however, would not accept any instructions, and would not give effect to any previous instructions, from a Clearing Member not to permit an OTP to designate the Clearing Member as a Designated Give Up. Further, the Exchange notes that there is no subjective evaluation of an OTP’s list of proposed Designated Give Ups by the Exchange.

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<sup>7</sup> As discussed below, proposed paragraph (h) of amended Rule 6.15 addresses and clarifies the financial responsibility of Clearing Members, and, as such, the Exchange believes the original rule text is rendered unnecessary.

<sup>8</sup> For purposes of this rule, references to “Market Maker” refer to OTPs acting in the capacity of a Market Maker and include all Exchange Market Maker capacities e.g., Lead Market Makers. As explained below, Market Makers give up Guarantors that have executed a Letter of Guarantee on behalf of the Market Maker, pursuant to Rule 6.36; Market Makers need not give up Designated Give Ups.

Rather, the Exchange proposes to process each list as submitted and ensure that the Clearing Members identified as Designated Give Ups are in fact current Clearing Members, as well as confirm that the Notification Forms are complete (e.g., contain appropriate signatures) and that the Options Clearing Corporation (“OCC”) numbers listed for each Clearing Member are accurate.

As amended, Rule 6.15 would also define the term “Guarantor” as a Clearing Member that has issued a Letter of Guarantee or Letter of Authorization for the executing OTP, pursuant to Rules of the Exchange<sup>9</sup> that is in effect at the time of the execution of the applicable trade. An executing OTP may give up its Guarantor without such Guarantor being a “Designated Give Up.” The Exchange notes that Rule 6.36 provides that a Letter of Guarantee is required to be issued and filed by each Clearing Member through which a Market Maker clears transactions. Accordingly, a Market Maker would only be enabled to give up a Guarantor that had executed a Letter of Guarantee on its behalf pursuant to Rule 6.36. Thus, Market Makers would not identify any Designated Give Ups.

As noted above, amended Rule 6.15 would provide that an OTP may give up only (i) the name of a Clearing Member that has previously been identified and processed by the Exchange as a Designated Give Up for that OTP, if not a Market Maker or (ii) its Guarantor.<sup>10</sup> This proposed requirement would be enforced by the Exchange’s trading systems. Specifically, the Exchange has configured its trading systems to only accept orders from an OTP that identifies a Designated Give Up or Guarantor for that OTP and would reject any order entered by an OTP

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<sup>9</sup> See Rule 6.36 (Letters of Guarantee); Rule 6.45 (Letters of Authorization).

<sup>10</sup> As described below, amended Rule 6.15(f) provides that a Designated Give Up or Guarantor may, under certain circumstances, reject a trade on which it is given up and another Clearing Member may agree to accept the subject trade.

that designates a give up that is not at the time a Designated Give Up or Guarantor of the OTP.<sup>11</sup> The Exchange notes that it would notify an OTP in writing when an identified Designated Give Up becomes “effective” (i.e., when a Clearing Member that has been identified by the OTP as a Designated Give Up has been enabled by the Exchange’s trading systems to be given up). A Guarantor for an OTP, by virtue of having an effective Letter of Authorization or Letter of Guarantee on file with the Exchange, would be enabled to be given up for that OTP without any further action by the OTP. The Exchange notes that this configuration (i.e., the trading system accepting only orders that identify a Designated Give Up or Guarantor) is intended to help reduce “keypunch errors” and prevent OTPs from mistakenly giving up the name of a Clearing Member that it does not have the ability to give up a trade.

#### Acceptance of a Trade

The Exchange proposes in paragraph (e) of amended Rule 6.15 that a Designated Give Up and a Guarantor may, in certain circumstances, determine not to accept a trade on which its name was given up. If a Designated Give Up or Guarantor determines not to accept a trade, the proposed Rule would provide that it may reject the trade in accordance with the procedures described more fully below under “Procedures to Reject a Trade.”

As proposed, a Designated Give Up may determine to not accept a trade on which its name was given up so long as it believes in good faith that it has a valid reason not to accept the trade and follows the procedures to reject a trade in proposed paragraph (f) of the amended Rule.<sup>12</sup>

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<sup>11</sup> See id.

<sup>12</sup> An example of a valid reason to reject a trade may be that the Designated Give Up does not have a customer for that particular trade.

The Exchange also proposes to provide that a Guarantor may opt to not accept (and thereby reject) a non-Market Maker trade on which its name was given up, provided that the following steps are completed: (i) another Clearing Member agrees to be the give up on the trade; (ii) that other Clearing Member has notified both the Exchange and executing OTP in writing of its intent to accept the trade; and (iii) the procedures in Rule 6.15(f) are followed. In addition, the give up must be changed to the Clearing Member that has agreed to accept the trade in accordance with the procedures in paragraph (f) of Rule 6.15. A Guarantor may not reject a trade given up by a Market Maker.

The Exchange notes that only a Designated Give Up or Guarantor whose name was initially given up on a trade is permitted to reject the trade, subject to the conditions noted above. The Clearing Member or Guarantor that becomes the give up on a rejected trade may not also reject the trade.

#### Procedures to Reject a Trade

The Exchange proposes to include in amended Rule 6.15 procedures that must be followed and completed in order for a Designated Give Up or Guarantor<sup>13</sup> to reject a trade. Specifically, a Designated Give Up can only change the give up to (1) another Clearing Member that has agreed to be the give up on the subject trade (“New Clearing Member”), provided the New Clearing Member has notified the Exchange and the executing OTP in writing of its intent to accept the trade in a form and manner prescribed by the Exchange (“Give-Up Change Form

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<sup>13</sup> The Exchange notes that amended Rule 6.15(f) contains rule text explicitly describing procedures for Guarantors to reject a trade that is not contained in the rule text approved in SR-CBOE-2014-048. See supra n. 5. The Exchange, however, believes that this additional description serves only to clarify, as opposed to alter, the procedure approved in SR-CBOE-2014-048.

for Accepting Clearing Member”);<sup>14</sup> or (2) a Guarantor for the executing OTP, provided the Designated Give Up has notified the Guarantor in writing that it is changing the give up on the trade to the Guarantor.<sup>15</sup> Further, as proposed, a Guarantor, can only reject a non-Market Maker trade<sup>16</sup> for which its name was the initial give up by an OTP and change the give up to another Clearing Member that has agreed to be the give up on the subject trade, provided the New Clearing Member has notified the Exchange and the executing OTP in writing of its intent to accept the trade (i.e., by filling out a Give-Up Change Form for Accepting Clearing Member). A Guarantor that becomes the give up on a trade as a result of the Designated Give Up rejecting the trade is prohibited from not accepting the trade/rejecting the trade. This prohibition would provide finality to the trade and ensure that the trade is not repeatedly reassigned from one Clearing Member to another.

As proposed, a Guarantor may only reject a non-Market Maker trade for which its name was the initial give up by an OTP, if another Clearing Member has agreed to be the give up on the trade and has notified the Exchange and executing OTP in writing of its intent to accept the trade. If a Guarantor of an OTP decides to reject a trade on the trade date, it must follow the same procedures to change the give up as would be followed by a Designated Give Up. The ability to make any changes, either by the Designated Give Up or Guarantor, to the give up pursuant to this procedure would end at the Trade Date Cutoff Time.

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<sup>14</sup> A copy of the proposed Give-Up Change Form for Accepting Clearing Member is included with this filing in Exhibit 3. Also, as noted above, a New Clearing Member cannot later reject the trade. Requiring the New Clearing Member to provide notice to the Exchange of its intent to accept the trade and prohibiting the New Clearing Member from later rejecting the trade would provide finality to the trade and ensure that the trade is not repeatedly reassigned from one Clearing Member to another.

<sup>15</sup> The Guarantor would not need to notify the Exchange of its intent to accept the trade.

<sup>16</sup> A Guarantor of an OTP that is a Market Maker may not reject a trade for which its name was given up in relation to such Market Maker.



Finally, once the give up on a trade has been changed, the Designated Give Up or Guarantor making the change must immediately thereafter notify, in writing, the Exchange, the parties to the trade, and the Clearing Member given up, of the change.

#### Rejection on Trade Date

As proposed, a trade may only be rejected on (i) the trade date or (ii) the business day following the trade date (“T+1”) (except that transactions in expiring options series on the last trading day prior to expiration may not be rejected on T+1).

If, on the trade date, a Designated Give Up decides to reject a trade, or another Clearing Member agrees to be the give up on a trade for which a Guarantor’s name was given up, the Exchange proposes that the rejecting Designated Give Up or Guarantor must notify, in writing, the executing OTP or its designated agent, as soon as possible and attempt to resolve the disputed give up. This requirement puts the executing OTP on notice that the give up on the trade may be changed and provides the executing OTP and Designated Give Up or Guarantor an opportunity to resolve the dispute. The Exchange notes that a Designated Give Up or Guarantor may request from the Exchange the contact information of the executing OTP or its designated agent for any trade it intends to reject.

Following notification to the executing OTP on the trade date, a Designated Give Up or Guarantor may request the ability from the Exchange to change the give up on the trade, in a form and manner prescribed by the Exchange (“Give-Up Change Form”). A copy of the proposed Give-Up Change Form is included with this filing in Exhibit 3. Provided that the Exchange is able to process the request prior to the trade input cutoff time established by the OCC (or the applicable later time if the Exchange receives and is able to process a request to extend its time of final trade submission to the OCC) (“Trade Date Cutoff Time”), the Exchange

would provide the Designated Give Up or Guarantor the ability to make the change to the give up on the trade to either (1) another Clearing Member or, as applicable, (2) the executing OTP's Guarantor.

#### Rejection on T+1

The Exchange acknowledges that some clearing firms may not reconcile their trades until after the Trade Date Cutoff Time. A clearing firm, therefore, may not realize that a valid reason exists to not accept a particular trade until after the close of the trading day or until the following morning. Accordingly, the Exchange proposes to establish a procedure for a Designated Give Up or Guarantor of an OTP that is not a Market Maker to reject a trade on the following trade day ("T+1").<sup>17</sup> The Exchange notes that a separate procedure must be established for T+1 changes because to effectively change the give up on a trade on T+1 an offsetting reversal must occur – as opposed to merely identifying a different Clearing Member on the trade.

Consistent with amended Rule 6.15(f), a Designated Give Up or Guarantor<sup>18</sup> that wishes to reject a trade on T+1 would have to notify the executing OTP, in writing, to try to attempt and resolve the dispute. In addition, a Designated Give Up or Guarantor may contact the Exchange and request the ability to reject the trade on T+1. Provided that the Exchange receives the request prior to 12:00 p.m. (ET) on T+1 ("T+1 Cutoff Time"), the Exchange would provide the Designated Give Up or Guarantor the ability to enter trade records into the Exchange's systems

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<sup>17</sup> The Exchange proposes that no changes to the give up on trades in expiring options series that take place on the last trading day prior to their expiration may take place on T+1. Rather, a Designated Give Up or Guarantor may only reject these transactions on the trade date until the Trade Date Cutoff Time in accordance with the trade date procedures described above.

<sup>18</sup> The Exchange again notes that, as proposed, only a Guarantor whose name was initially given up is permitted to reject a trade (i.e., a Guarantor cannot reject a trade on T+1 for which it has become the give up as a result of a Designated Give Up not accepting the trade).

that would effect a transfer of the trade to another Clearing Member. As noted above, if a New Clearing Member agrees to the give up on a trade, it would be required to inform the Exchange of its acceptance via the Give-Up Change Form for Accepting Clearing Members. A Guarantor that becomes the new give up on T+1 would not need to notify the Exchange of its intent to accept the trade, nor would it need to submit any notification or form. The Designated Give Up however, would be required to provide written notice to the Guarantor that it will be making this change on T+1. The Exchange notes that the ability for either a Designated Give Up or Guarantor to make these changes would end at the T+1 Cutoff Time and would provide finality and certainty as to which Clearing Member will be the give up on the subject trade.

In addition, once any change to the give up has been made, the Designated Give Up or Guarantor making the change would be required to immediately thereafter notify, in writing, the Exchange, the parties to the trade and the Clearing Member given up, of the change.

As discussed above, the Exchange proposes to allow OTPs that are not Market Makers to identify any Clearing Member as a Designated Give Up. The Exchange's proposal does not permit a Clearing Member to provide the Exchange instructions to prohibit a particular OTP from giving up the Clearing Member's name. This limitation prevents the Exchange from being placed in the position of arbiter among a Clearing Member, an OTP and a customer. The Exchange recognizes, however, that OTPs should not be given the ability to give up any Clearing Member without also providing a method of recourse to those Clearing Members which, for the prescribed reasons discussed above,<sup>19</sup> should not be obligated to clear certain trades for which they are given up. Accordingly, the Exchange is proposing to provide Designated Give Ups and Guarantors the ability to reject a trade, provided each has a good faith basis for doing so.

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<sup>19</sup> See supra n. 12.

Ultimately, however, the trade must clear with a clearing firm and there must be finality to the trade. The Exchange believes that the executing OTP's Guarantor, absent a Clearing Member that agrees to accept the trade, should become the give up on any trade which a Designated Give Up determines to reject in accordance with these proposed rule provisions, because the Guarantor, by virtue of having issued a Letter of Guarantee or Letter of Authorization, has already accepted financial responsibility for all Exchange transactions made by the executing OTP. The Exchange, however, does not want to prevent a Clearing Member that agrees to accept the trade from being able to do so, and accordingly, the Exchange also provides that a New Clearing Member may become the give up on a trade in accordance with the procedure discussed above.

#### Other Give Up Changes

The Exchange proposes to modify the text of Rule 6.66(a), related to the give up requirement for OTPs, to simply cross reference amended Rule 6.15 given the detailed give up process proposed by the Exchange in that Rule.

The Exchange also proposes in paragraph (g) of amended Rule 6.15 three scenarios in which a give up on a transaction may be changed without Exchange involvement. First, if an executing OTP has the ability through an Exchange system to do so, it could change the give up on a trade to another Designated Give Up or its Guarantor. The Exchange notes that OTPs often make these changes when, for example, there is a keypunch error (i.e., an error that involves the erroneous entry of an intended clearing firm's OCC clearing number). The ability of the executing OTP to make any such change would end at the Trade Date Cutoff Time.<sup>20</sup>

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<sup>20</sup> After that time, the OTP would no longer have the ability to make this type of change, as the trade will have been submitted to OCC.

Next, the modified rule would provide that, if a Designated Give Up has the ability to do so, it may change the give up on a transaction for which it was given up to (i) another Clearing Member affiliated with the Designated Give Up or (ii) a Clearing Member for which the Designated Give Up is a back office agent. The ability to make such a change would end at the Trade Date Cutoff Time. The procedures to reject a trade, as set forth in proposed subparagraph (f) of Rule 6.15 and described above, would not apply in these instances. The Exchange notes that often Clearing Members themselves have the ability to change a give up on a trade for which it was given up to another Clearing Member affiliate or Clearing Member for which the Designated Give Up is a back office agent. Therefore, Exchange involvement in these instances is not necessary.

In addition, the proposed rule provides that if both a Designated Give Up or Guarantor and a Clearing Member have the ability through an Exchange system to do so, the Designated Give Up or Guarantor and Clearing Member may each enter trade records into the Exchange's systems on T+1 that would effect a transfer of the trade in a non-expired option series from that Designated Give Up to that Clearing Member. Likewise, if a Guarantor of an OTP trade (that is not a Market Maker trade) and a Clearing Member have the ability through an Exchange system to do so, the Guarantor and Clearing Member may each enter trade records into the Exchange's systems on T+1 that would effect a transfer of the trade in a non-expired option series from that Guarantor to that Clearing Member. The Designated Give Up or Guarantor could not make any such change after the T+1 Cutoff Time. The Exchange notes that a Designated Give Up (or Guarantor) must notify, in writing, the Exchange and all the parties to the trade, of any such change made pursuant to this provision. This notification alerts the parties and the Exchange that a change to the give up has been made. Finally, the Designated Give Up (or Guarantor) would be

responsible for monitoring the trade and ensuring that the other Clearing Member has entered its side of the transaction timely and correctly. If either a Designated Give Up (or Guarantor) or Clearing Member cannot themselves enter trade records into the Exchange's systems to effect a transfer of the trade from one to the other, the Designated Give Up (or Guarantor) may request the ability from the Exchange to enter both sides of the transaction in accordance with amended Rule 6.15 and pursuant to the procedures set forth in subparagraph (f)(3) of that Rule.

### Responsibility

The Exchange proposes in paragraph (h) of amended Rule 6.15 to state that a Clearing Member would be financially responsible for all trades for which it is the give up at the Applicable Cutoff Time (for purposes of the proposed rule, the "Applicable Cutoff Time" shall refer to the T+1 Cutoff Time for non-expiring option series and to the Trade Date Cutoff Time for expiring option series). The Exchange notes, however, that nothing in the proposed rule shall preclude a different party from being responsible for the trade outside of the Rules of the Exchange pursuant to OCC Rules, any agreement between the applicable parties, other applicable rules and regulations, arbitration, court proceedings or otherwise.<sup>21</sup> Moreover, in processing a request to provide a Designated Give Up the ability to change a give up on a trade, the Exchange would not consider or validate whether the Designated Give Up has satisfied the requirements of this Rule in relation to having a good faith belief that it has a valid reason not to accept a trade or having notified the executing OTP and attempting to resolve the disputed give up prior to changing the give up. Rather, upon request, the Exchange would always provide a

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<sup>21</sup> See proposed Commentary .01 to Rule 6.15 ("Nothing herein will be deemed to preclude the clearance of Exchange transactions by a non- OTP Holder or non-OTP Firm pursuant to the By-Laws of the Options Clearing Corporation so long as a Clearing Member who is a OTP Holder or OTP Firm is also designated as having responsibility under these Rules for the clearance and comparison of such transactions.").

Designated Give Up or Guarantor the ability to change the give up or to reject a trade pursuant to the proposed Rule so long as the Designated Give Up or Guarantor, and New Clearing Member, if applicable, have provided a completed set of give up Change Forms within the prescribed time period.

The Exchange notes that given the inherent time constraints in making a change to a give up on a transaction, the Exchange would not be able to adequately consider the above-mentioned requirements and make a determination within the prescribed period of time. Rather, the Exchange would examine trades for which a give up was changed pursuant to subparagraphs (e) and (f) after the fact to ensure compliance with the requirements set forth in amended Rule 6.15. Particularly, the Exchange notes that the give up Change Forms that Designated Give Ups, Guarantors and New Clearing Members must submit, would help to ensure that the Exchange obtains, in a uniform format, the information that it needs to monitor and regulate this Rule and these give up changes in particular. This information, for example, would better allow the Exchange to determine whether the Designated Give Up had a valid reason to reject the trade, as well as assist the Exchange in cross checking and confirming that what the Designated Give Up or Guarantor said it was going to do is what it actually did (e.g., check that the New Clearing Member identified in the give up Change Form was the Clearing Member that actually was identified on the trade as the give up). Additionally, the proposed Rule does not preclude these factors from being considered in a different forum (e.g., court or arbitration), nor does it preclude any Clearing Member that violates any provision of amended Rule 6.15 from being subject to discipline in accordance with Exchange rules.

Finally, the Exchange proposes to eliminate language in Rule 6.79 that addresses the financial responsibility of transactions clearing through Clearing Members. Under the proposal,

financial responsibility would be addressed and clarified in amended Rule 6.15, and as such, the Exchange believes this language in Rule 6.79 is unnecessary.<sup>22</sup>

### Implementation

The Exchange proposes to announce the implementation of the proposed rule change via Trader Update, to be published no later than thirty (30) days following the effectiveness of this proposal. The implementation date will be no sooner than fourteen (14) day and no later than thirty (30) days following publication of the Trader Update. This additional time would afford the Exchange and OTPs the time to submit and process the forms required under the proposed rule.

## 2. Statutory Basis

The Exchange believes that the proposed change is consistent with Section 6(b) of the Act,<sup>23</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>24</sup> in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>25</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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<sup>22</sup> The Exchange also proposes to capitalize the two references to “clearing member” in this rule to signify the defined term, which the Exchange believes would add clarity and consistency to Exchange rules.

<sup>23</sup> 15 U.S.C. 78f(b).

<sup>24</sup> 15 U.S.C. 78f(b)(5).

<sup>25</sup> Id.



First, detailing in the rules how OTPs would give up Clearing Members and how Clearing Members may “reject” a trade provides transparency and operational certainty. The Exchange believes additional transparency removes a potential impediment to, and would contribute to perfecting, the mechanism for a free and open market and a national market system, and, in general, would protect investors and the public interest. Moreover, the Exchange notes that amended Rule 6.15 requires OTPs to adhere to a standardized process to ensure a seamless administration of the Rule. For example, all notifications relating to a change in give up must be made in writing. The Exchange believes that these requirements will aid the Exchange’s efforts to monitor and regulate OTPs and Clearing Members as they relate to amended Rule 6.15 and changes in give ups, thereby protecting investors and the public interest.

Additionally, the Exchange believes that its proposed give up rule strikes the right balance between the various views and interests of market participants. For example, although the rule allows OTPs that are not Market Makers to identify any Clearing Member as a Designated Give Up, it also provides that OTPs would receive notice of any OTP that has designated it as a Designated Give Up and provides for a procedure for a Clearing Member to “reject” a trade in accordance with the Rules, both on the trade date and T+1.

The Exchange recognizes that OTPs should not be given the ability to give up any Clearing Members without also providing a method of recourse to those Clearing Members which, for the prescribed reasons discussed above, should not be obligated to clear certain trades for which they are given up. The Exchange believes that providing Designated Give Ups the ability to reject a trade within a reasonable amount of time is consistent with the Act as, pursuant to the proposed rule, the Designated Give Ups may only do so if they have a valid reason and because ultimately, the trade can always be assigned to the Guarantor of the executing OTP if a

New Clearing Firm is not willing to step in and accept the trade. A trade must clear with a clearing firm and there must be finality to the trade. Absent a New Clearing Member that agrees to accept the trade, the Exchange believes that the executing OTP's Guarantor should become the give up on any trade that a Designated Give Up determines to reject, in accordance with the proposed rule provisions, because the Guarantor, by virtue of having issued a Letter of Guarantee or Letter of Authorization, has already accepted financial responsibility for all Exchange transactions made by the executing OTP. Therefore, Rule 6.15, as modified, is reasonable and provides certainty that a Clearing Member will always be responsible for a trade, which protects investors and the public interest.

The Exchange notes that amended Rule 6.15 does not preclude a different party than the party given up from being responsible for the trade outside of the Rules of the Exchange, pursuant to OCC Rules, any agreement between the applicable parties, other applicable rules and regulations, arbitration, court proceedings or otherwise. The Exchange acknowledges that it would not consider whether the Designated Give Up has satisfied the requirements of this Rule in relation to having a good faith belief that it has a valid reason not to accept a trade or having notified the executing OTP and attempting to resolve the disputed give up prior to changing the give up, due to inherent time restrictions. However, the Exchange believes investor and public interest are still protected as the Exchange will still examine trades for which a give up was changed pursuant to subparagraphs (e) and (f) of amended Rule 6.15 after the fact to ensure compliance with the requirements set forth in the Rule. As noted above, the implementation of a standardized process and the requirement that certain notices be in writing would assist monitoring any give up changes and enforcing amended Rule 6.15.

Further, the Exchange notes that the Rule does not preclude these factors from being considered in a different forum (e.g., court or arbitration) nor does it preclude any OTP or Clearing Member that violates any provision of amended Rule 6.15 from being subject to discipline by the Exchange.

Finally, the Exchange believes that making non-substantive, technical corrections to the rule text (i.e., capitalizing the defined term “clearing member”) would add clarity and consistency to Exchange rules to the benefit of investors and the general public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change would impose an unnecessary burden on intramarket competition because it would apply equally to all similarly situated OTPs. The Exchange also notes that, should the proposed changes make the Exchange more attractive for trading, market participants trading on other exchanges can always elect to become OTPs on the Exchange to take advantage of the trading opportunities. In addition, as noted above, the Exchange believes the proposed rule change is pro-competitive and would allow the Exchange to compete more effectively with other options exchanges that have already adopted changes to their give up process that are substantially identical to the changes proposed by this filing.<sup>26</sup>

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<sup>26</sup> See supra n. 5.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>27</sup> and Rule 19b-4(f)(6) thereunder.<sup>28</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>29</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>30</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to that of another exchange that has been approved by the Commission.<sup>31</sup> Waiver of the 30-day operative delay will allow the Exchange to implement the proposed rule change, which is

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<sup>27</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>28</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

<sup>29</sup> 17 CFR 240.19b-4(f)(6).

<sup>30</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>31</sup> See supra n. 5.

designed to bring greater operational certainty and efficiency to the give up process, in accordance with the implementation schedule outlined above. Therefore, the Commission designates the proposed rule change to be operative upon filing.<sup>32</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>33</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

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<sup>32</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>33</sup> 15 U.S.C. 78s(b)(2)(B).

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2015-65 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2015-65. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2015-65 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated

authority.<sup>34</sup>

Jill M. Peterson  
Assistant Secretary

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<sup>34</sup> 17 CFR 200.30-3(a)(12).